

No. 9/5/84-6Lab./6500.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947. (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the Management of (i) Chief Engineer, P.W.D. (Public Health), Haryana (Chandigarh), (ii) Executive Engineer, G.W.I., Public Health Sub-Division, Gurgaon.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD.

Reference No. 248 of 1984

between

SHRI JAI NARAIN, WORKMAN AND THE
RESPONDENT MANAGEMENT OF
(i) CHIEF ENGINEER, P.W.D. (PUBLIC
HEALTH), HARYANA, CHANDI-
GARH, (ii) EXECUTIVE ENGINEER,
G.W.I. PUBLIC
HEALTH SUB-DIVISION,
GURGAON.

Present:—

Shri Jai Narain, workman in person.

Shri Randhir Singh, A.D.A., for the respon-
dent-management.

AWARD

This industrial dispute between the workman, Shri Jai Narain, and the respondent management of Chief Engineer, P. W. D. (Public Health), Haryana, Chandigarh, (ii) Executive Engineer, G.W.I. Public Health Sub-Division, Gurgaon, has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/82-84/28397-401, dated 6th August, 1984, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Jai Narain, was justified and in order? If not to what relief is he entitled?

According to the demand notice the claimant was appointed in the year 1976. He was transferred from Ambala to Gurgaon. He has further stated that he went on leave on 8th July, 1981

as he had to appear in Labour Court, Ambala. He returned on 1st September, 1981. He was not allowed to join duty. He stayed at Gurgaon on 7th September, 1981. In the mean time there was a publication that he should join duty within 15 days. He reported on 8th September, 1981, to the Sub-Divisional Engineer, G.W.I., Public Health, Gurgaon. He also gave notice but no reply was received from the Xen. No notice was received by him that his services were terminated. He has prayed up-to-date pay with increments, D.A. up-to-date.

This claim has been contested by the management. It is contended that the service of the workman were never terminated and that he has left the job on 8th July, 1981. Objection is further taken that the claimant is not workman and the Public Health Department is a Department of the Government. Hence the reference is bad. On facts it is admitted that the claimant has applied for leave from 8th July, 1981 to 31st July, 1981 which was turned down and he was asked to join duty but he did not join duties.

The claim was contested on the following issues:—

- (1) Whether the respondent management is not an industry?
- (2) Whether the claimant has abandoned his job voluntarily?
- (3) As per reference?

I have heard the rep. of both the parties and gone through the evidence on record. My findings on the issues are as under:—

Issue No. 1:—

None of the parties has given any evidence that the P.W.D., is an industry. According to the claim he was chageman in the Public Health Department G.W.I., but he has not tried to state functions of the department. It has been held by our own High Court that the Irrigation department is performing Government functions neither partake of the nature of trade and business nor are even remotely analogous thereto and this department does not come within the ambit of industry. This has been so held in *Om Parkash v. Xen*, 1984 Lab. I.C. page 1165. Reliance has been placed on the judgement of Hon'ble Supreme Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, 1978-Lab. I.C., page 467. The workman has also relied on this judgement of the Hon'ble Supreme Court. As there is no evidence of the functions

of the department, therefore, the judgement of the Hon'ble Supreme Court in *Om Parkash versus Xen. and others* has been acted upon that the Irrigation Department is not industry. On the same basis the functions of the Public Health Department are the same and it cannot be held to be an industry. Hence the management is not an industry and the claimant is not workman. This issue is decided against the workman.

Issue No. 2:—

The management has contended that the services of the workman have been terminated. He has left the service of his own. He has not joined duties since 8th July, 1981. As against this Statement the claimant has contended that he returned to join duties but he was not allowed to join duties. Even in his claim statement he has admitted that he went on leave on 8th July, 1981. It is admitted by him in his statement that his leave was not sanctioned when he proceeded on leave. He remained absent from 8th July, 1981 to 1st September, 1981. Even if it is admitted he came to join duties on 1st September, 1981. No orders has been passed for terminating the service of the claimant. Hence it cannot be said that his services were terminated. Rather he has left the services of his own. Hence the reference is, therefore, bad in law, as the state has presumed that the services of the workman were terminated; whereas the plea of the department is that the claimant has voluntarily left the services. The State Government cannot presume that the services of the workman were terminated. Hence the reference is bad in view of the judgement of Hon'ble Bombay High Court in *Sita Ram Vishnu Shirodkar versus The Administrator, Government of Goa and others*, 1985, LLJ, page 480. Hence this issue is decided against the workman.

Issue No. 3:

There is no order of termination of services of the workman. Hence it was for not the state to presume that the services of the workman have been terminated illegally. The defence of the management is that the workman has left the services voluntarily. It cannot be decided as there is no reference on this ground. The reference is answered that the reference is bad in law because the respondent is not an industry and also on the ground that according to the plea of the Department the workman has left

the services of his own and this point has not been referred for adjudication:

Dated: 13th July, 1985.

R. N. SINGAL.

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 2134, dated the 29th July, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment, Chandigarh, as required under Section 15 of the Industrial Disputes Act.

R. N. SINGAL.

Presiding Officer,
Labour Court, Faridabad.

Dated: 13th July, 1985.

The 20th August, 1985.

No. 9/5/84-6 Lab./6647.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the Management of M/s. Clutch Auto Ltd., Plot No. 111-112, Sector 6, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD.

Reference No. 138 of 1984

Between

SHRI KRISHAN NANDAN, WORKMAN AND
THE RESPONDENT-MANAGEMENT OF
M/s. CLUTCH AUTO LTD., PLOT NO.
111-112, SECTOR 6, FARIDABAD.

Present:—

Shri Amar Singh Sharma, for the workman.
Shri Rajesh Sharma, for the respondent-management.

AWARD

This industrial dispute between the workman Shri Krishan Nandan and the respondent-management of M/s. Clutch Auto, Plot No. 111-112, Sector 6, Faridabad, has been referred to this Court by the Hon'ble Governor of Haryana—vide his order No. ID/FD/32-84/25899-904, dated 24th July, 1984, under Section 10(i)(c) of

the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Krishan Nandan was justified and in order? If not to what relief is he entitled?

According to the demand notice, the claimant was employed as helper on 7th July, 1978 and his services were illegally terminated at 11.00 p.m. on 24th January, 1984. He has prayer for reinstatement with continuity of service and with full back wages.

In the claim statement, he has stated that the management has shifted the factory from Sector 6 to Sarai Khoja in November, 1983. The workers were transferred to the new factory who were not active members of the union but the active member of the union were retained in Sector 6, Factory. The management obtained resignation of the workman with threat. It also happened with the workman. He was called in the night shift on 24th January, 1984, from 4.30 to 12.30 mid night. At 11.00 p.m. he was called in the office and the security Guard were sitting there and they started beating him and his signatures were obtained. He lodged a complaint in the Police Post. The Police Staff made an enquiry and asked the management to cancel the resignation. On the next day he went to join the factory but he was not allowed to join the duty. Hence it is prayed that he be reinstated with full back wages and continuity of service.

The management has contended that in the claim statement it is stated that the workman has resigned from the factory with effect from 25th January, 1984. Hence the reference is bad and the Government has not applied its mind. Hence the reference is incompetent and bad in law. It is further alleged that under Section 2-A of the Industrial Disputes Act, 1947 an individual disputes arise out of discharge, dismissal and retrenchment. It does not cover the case of resignation. It is further stated that this Court has no jurisdiction to adjudicate this reference on merits. It is admitted that he was employed on 9th July, 1978. It is admitted that a new Plant at Mathura Road, Faridabad has been started and part of the plant machinery and workers have been transferred to the new Plant. A notice was issued calling the workman to the new Plant. The claimant and some other workman did not exercise their option. They chose to remain in Plant No. I. It is denied that the workman of Plant I were forced to resign. It is

alleged that the claimant was on day shift on 24th January, 1984, and this shift started at 8.30 a.m. to 4.30 p.m. He has submitted his resignation to Shri M. P. Sharma. Acceptance letter was issued to him which was received by him. It is denied that the complaint was lodged with the police station. These allegations are after thought. After his resignation the workman did not come forwarded to collect his dues. He did not come to the factory after that. His dues were sent to him on 3rd February, 1984, amounting to Rs. 3,284.65 p. under registered post. This register letter was received back that the addressee was not available. Objection is taken that the workman is gainfully employed and the factory where the workman was employed was closed.

In his rejoinder the workman has denied that he tendered his resignation. It is also denied that the workman is gainfully employed. It is further alleged that the plant has been shifted from one place to another. The reference was contested on the following issues:—

- (1) Whether the reference is not maintainable as alleged?
- (2) Whether the claimant resigned voluntarily?
- (3) As per reference

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the above issues seriatim are as under:—

Issue No. 1:—

In the demand notice the workman has nowhere alleged denied that the resignation was obtained by beating him. The management has contended that the workman voluntarily resigned from the job. In the claim statement it is pleaded that the resignation was obtained by beating him. The Government has not referred this dispute for adjudication. It has been presumed that the services of the workman have been terminated and, therefore, the following reference has been referred to this court:—

Whether the termination of services of Shri Krishan Nandan was justified and in order? If not, to what relief is he entitled?

The court cannot go beyond the reference. It can decide incidental matters arising out of

the reference. The main case of the parties is whether the resignation of the workman was voluntary obtained or it was obtained after beat-log, but this dispute has not been referred to this court. It has been held by the Bombay High Court in *Sita Ram Vishnu Shirodkar versus The Administrator, Government of Goa and others*; 1985 L.L.J., page 480 that :—

"It is the case of the workman that the management terminated the services of the workman. On the contrary it was the case of the Management that the workman absented from duty and that the workman absented from duty and abandoned the job. The Government made a reference as if the services of the workman were terminated. A writ petition was filed challenging the order of reference.

Allowing the writ petition held that "Tribunal constituted under the Act cannot travel beyond the reference and decide whether the workman had abandoned the service or not. The reference proceeds under the basis that there was termination of service and only question left open for decision was the termination was legal and proper. In this view of the matter the order of reference is bad."

Reliance has also been placed on the observation of the full bench of Delhi High Court *M/s. India Tourism Development Corporation, New Delhi versus Delhi Administration, Delhi and others* (1982) L.I.C. page 1309. In that case the dispute was whether there was closure or a lock out. The terms of the reference were :—

Whether the workmen as shown in Annexure "A" are entitled to wages for a period of lock out with effect from 1st January, 1981 and if so what directions are necessary in this respect.

Delhi High Court observations are as follows :—

"It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference. It exercises such juris-

diction and power only upon the under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Article, 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. We are of the view that the existence of lock out itself being the real dispute between the management and its workmen, the terms of reference exceeds on the assumption that there was lock out with effect from January 1, 1981. There is a very thin line of distinction between closure and a lock out. The real dispute between the parties was whether there was at all a lock out or whether there was violence by the workmen and for that reason there was suspension of the working of the restaurant with effect from January 2, 1981, and whether the closure of the restaurant from February 18, 1981, was proper and for that reason the termination of the services of the workmen was justified and legal. The appropriate Government has failed to take into consideration the entire set of circumstances brought out by the management in the two notices displayed and the replies furnished to the Delhi Administration to come to the conclusion whether it was lock out or closure, whether in fact there was a closure or lock out is the real dispute which can more appropriately be determined in industrial adjudication. The Industrial Tribunal cannot go into that question as the real dispute has not been made the subject matter of the order of reference."

In view of the above cited law, this court cannot travel beyond the reference. It cannot decide whether the resignation was voluntary or obtained by fraud. Hence the reference is bad in law. It is open to the Government to

consider whether a fresh reference should be made or not. garh, as required under section 15 of the Industrial Disputes Act.

R. N. SINGAL,

R. N. SINGAL,

Dated the 17th July, 1985.

Presiding Officer,
Labour Court, Faridabad.

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 2202, dated the 1st August, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh.

KULWANT SINGH,

Secretary to Government Haryana,
Labour & Employment Department

श्रम विभाग

दिनांक 13 सितम्बर, 1985

सं. ओ.वि./157-84/37982—चूंकि हरियाणा के राज्यपाल की राय है कि मै. डी०डो०आई०एल०, 14/5, मयूरा रोड, फरीदाबाद, के श्रमिकों तथा प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले के सम्बन्ध में कोई औद्योगिक विवाद है;

और चूंकि राज्यपाल, हरियाणा, इस विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उप धारा (1) के खण्ड (घ) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुये, हरियाणा के राज्यपाल इसके द्वारा उक्त अधिनियम की धारा 7-क के अधीन गठित औद्योगिक अधिकरण, हरियाणा, फरीदाबाद, को नीचे विनिर्दिष्ट मामले, जो कि उक्त प्रबन्धकों तथा श्रमिकों के बीच या तो विवादग्रस्त मामले हैं, अथवा विवाद से सुसंगत या संबंधित मामले हैं, न्यायनिर्णय एवं पचाट छः मास में देने हेतु निर्दिष्ट करते हैं:—

(1) क्या संस्था के श्रमिक पद एवं कार्य अनुसार ग्रेड व स्केल के हकदार हैं? यदि हां, तो किस विवरण से?

(2) क्या संस्था के श्रमिक साईकिल भत्ते के हकदार हैं? यदि हां, तो किस विवरण से?

सं. ओ.वि./एफ.डी./68-85/37989.—चूंकि हरियाणा के राज्यपाल की राय है कि मै० चीक ब्रिक किलन कम्पनी, असावती, पलवल, जिला फरीदाबाद, के श्रमिक तथा प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले के सम्बन्ध में कोई औद्योगिक विवाद है;

और चूंकि राज्यपाल, हरियाणा इस विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उप धारा (1) के खंड (घ) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुये, हरियाणा के राज्यपाल इसके द्वारा उक्त अधिनियम की धारा 7-क के अधीन गठित औद्योगिक अधिकरण, हरियाणा, फरीदाबाद, को नीचे विनिर्दिष्ट मामले, जो कि उक्त प्रबन्धकों तथा श्रमिकों के बीच या तो विवादग्रस्त मामले हैं, अथवा विवाद से सुसंगत या सम्बन्धित मामले हैं, न्यायनिर्णय एवं पचाट छः मास में देने हेतु निर्दिष्ट करते हैं:—

(1) क्या संस्था के श्रमिक वर्ष 1981-82, 1982-83, 1983-84, 1984-85 का बोनस 20 प्रतिशत के हिसाब से लेने के हकदार हैं? यदि हां, तो किस विवरण से?

(2) क्या संस्था के श्रमिक वर्ष में दो जोड़े बर्दी लेने के हकदार हैं? यदि हां, तो किस विवरण से?

(3) क्या संस्था के श्रमिक माह में 5 किलो गुड़ लेने के हकदार हैं? यदि हां, तो किस विवरण से?

सं. ओ.वि./एफ.डी./46-85/38001.—चूंकि हरियाणा के राज्यपाल की राय है कि मै० सुमीत इण्टरप्राईजिज, प्लॉट नं० 316, सेक्टर 24 फरीदाबाद, के श्रमिक तथा प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले के सम्बन्ध में कोई औद्योगिक विवाद है;

और चूंकि राज्यपाल हरियाणा के इस विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उप धारा (1) के खण्ड (घ) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा उक्त अधिनियम की धारा 7क के अधीन गठित औद्योगिक अधिकरण, हरियाणा, फरीदाबाद, को नीचे विनिर्दिष्ट मामले जो कि उक्त प्रबन्धकों तथा श्रमिकों के बीच या तो विवादग्रस्त मामले हैं, विवाद से सुसंगत या सम्बन्धित मामले हैं, न्यायनिर्णय एवं पचाट छः मास में देने हेतु निर्दिष्ट करते हैं:—

(1) क्या संस्था के सभी श्रमिक वर्ष 1982-83 तथा 1983-84 के बकाया बोनस की राशि 20 प्रतिशत के हिसाब से लेने के हकदार हैं? यदि हां, तो किस विवरण से?

- (2) क्या संस्था के श्रमिक साल में दो जोड़ी टैरीकाट की बर्दी और एक जोड़ी जूते के हकदार हैं ? यदि हां, तो किस विवरण से ?
- (3) क्या संस्था के श्रमिक माह में एक किलो साबुन तथा गुड़ तथा दूध के लिए 100 रुपए प्रति माह के हकदार हैं ? यदि हां, तो किस विवरण से ?
- (4) क्या संस्था का प्रत्येक श्रमिक सालाना तरबकी 50 रुपए के हिसाब से, लेने का हकदार है ? यदि हां, तो किस विवरण से ?

सं. ओ. वि./एफ. डी./45-85/38013.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं, सिराको आटो प्रा० लि०, सैक्टर 6, फरीदाबाद, के श्रमिक तथा प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले के सम्बन्ध में कोई औद्योगिक विवाद है ;

और चूंकि राज्यपाल हरियाणा इस विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं ;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947 की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित औद्योगिक अधिकरण, हरियाणा, फरीदाबाद, को नीचे विनिर्दिष्ट मामलों जो कि उक्त प्रबन्धकों तथा श्रमिकों के बीच या तो विवादग्रस्त मामलों हैं, अथवा विवाद से सुसंगत या संबंधित मामलों हैं, न्यायनिर्णय एवं पंचाट छः मास में देने हेतु निर्दिष्ट करते हैं :—

- (1) क्या संस्था के श्रमिक वर्ष 1983-84 का बोनस 20 प्रतिशत के हिसाब से लेने का हकदार है ? यदि हां तो किस विवरण से ?
- (2) क्या संस्था के श्रमिक एक जोड़ा जूता लेने का हकदार है ? यदि हां, तो किस विवरण से ?
- (3) क्या संस्था के श्रमिक कपड़े धोने के लिए माह में एक किलो साबुन के हकदार है ? यदि हां, तो किस विवरण से ?
- (4) क्या संस्था के श्रमिक वर्ष में दो जोड़े यूनिफार्म के हकदार है ? यदि हां तो, किस विवरण से ?

पुलवन्त सिंह,

वित्त-युक्त एवं सचिव, हरियाणा सरकार,

श्रम तथा रोजगार विभाग।

दिनांक 17 सितम्बर, 1985

सं. ओ. वि./रोहतक/134-85/38378.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं, सीहन सपीमिंग मिल्स, रोहतक, के श्रमिक श्री हीरा लाल तथा उसके प्रबन्धकों के बीच इसमें इसके बाद लिखित मामले में कोई औद्योगिक विवाद है ;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं ;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 9641-1-श्रम/78-32573, दिनांक 6 नवम्बर, 1970, के साथ गठित सरकारी अधिसूचना की धारा 7 के अधीन गठित श्रम न्यायालय, रोहतक, को विवादग्रस्त या उससे सुसंगत या उससे संबंधित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जो कि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या उक्त विवाद से सुसंगत या संबंधित मामला है :—

क्या श्री हीरा लाल की सेवाओं का समापन न्यायोचित तथा ठीक है ? यदि नहीं, तो वह किस राहत का हकदार है ?

सं. ओ. वि./रोहतक/135-85/38385.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं, महेवरी एण्ड कम्पनी, बहादुरगढ़, के श्रमिक श्री सत्यवान तथा उसके प्रबन्धकों के बीच इसमें इसके बाद लिखित मामले में कोई औद्योगिक विवाद है ;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं ;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 9641-1-श्रम/78-32573, दिनांक 6 जून, 1970 के साथ गठित सरकारी अधिसूचना की धारा 7 के अधीन श्रम न्यायालय, रोहतक, को विवादग्रस्त या उससे सुसंगत या उससे संबंधित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जो कि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या उक्त विवाद से सुसंगत या संबंधित मामला है :—

क्या श्री सत्यवान की सेवाओं का समापन न्यायोचित तथा ठीक है ? यदि नहीं, तो वह किस राहत का हकदार है।